

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1477 OF 2015

Shri Anil Laxman Otari
Smt. Lata Jival Otari and Ors

Vs

Petitioner
.. Respondents

Mr. Amit B. Borkar, Advocate for Petitioner.
Mr. Sandeep S. Koregave, Advocate for Respondents no. 1 and 3.

CORAM : R.G.KETKAR,J.
DATE : 13/04/2016

PC:

1. Not on Board. At the request of Mr. Koregave, taken up for admission.
2. Heard Mr. Amit Borkar, learned counsel for the petitioner and Mr. Sandeep Koregave, learned counsel for respondents no. 1 and 3.
3. Mr. Borkar seeks leave to delete respondent no.2 on the ground that respondents no. 1 and 3 are only contesting respondents. On the motion made by Mr. Borkar, leave to delete respondent no.2 is granted. Amendment shall be carried out forthwith.
4. Rule. Mr. Koregave waives service. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing
5. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order

dated 17/02/2014 passed by the learned 16th Joint Civil Judge, Junior Division, Kolhapur below Exhibit 16 in Regular Civil Suit No. 520 of 2013. By that order, the learned trial Judge framed following preliminary issue:

“Whether the Suit is properly valued and proper court fees has been paid ?”

6. Mr.Borkar submitted that the plaintiff has instituted Suit, inter alia, for declaration that he is the owner of the suit property; in the alternative for partition and separate possession of his 28/60th share in case the Will executed by Laxman Kushappa Otari, since deceased, is not established; for cancellation of development agreement dated 27/12/2001 executed by defendant No.1 in favour of defendant No. 3 and for declaration that the said is not binding on the plaintiff; for perpetual injunction restraining the defendants from causing obstruction to the peaceful possession of the plaintiff over the suit property.

7. During the pendency of the Suit, the defendants filed application, inter alia, contending that valuation made by the plaintiff is not proper. In other words, the plaintiff has undervalued the Suit. The defendants, therefore, prayed for direction to direct the plaintiff to value the suit property as per market value and accordingly pay court fee stamp. By the impugned order, the learned trial Judge has framed preliminary

issue.

8. Mr. Borkar submitted that under Order 14 Rule 2 of Code of Civil Procedure, 1908 where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force. He submitted that the learned trial Judge could not have framed preliminary issue as the matter requires evidence to be led by either of the parties. He submits that appropriate course to be adopted in such eventuality is order enquiry under Section 8 of the Maharashtra Court Fees Act (for short, 'Act'). He submitted that plaintiff is ready and willing for enquiry under Section 8.

9. By order dated 11.1.2016, notice was issued to the respondents for final disposal of the petition. In that order, it was recorded that the plaintiff is ready and willing for inquiry under section 8 of the Act. Mr. Koregave states that even respondents no.1 and 3 are ready and willing for inquiry under section 8.

10. In view thereof, the learned trial Judge shall now hold inquiry under section 8 of the Act and pass appropriate direction. The learned trial Judge shall pass direction uninfluenced by the order impugned in the present petition. All the contentions on

merits are expressly kept open. The learned trial Judge is requested to complete the inquiry as expeditiously as possible

11. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)